than a check on it. Americans do not want judges to view any group or individual who walks into the courtroom as being more equal than any other group or individual. They expect someone who will apply the law equally to everyone, so everyone has a fair shake.

Americans expect, and should receive, equal treatment whether they are in small claims court or the Supreme Court. And any judge who pushes for an outcome based on their own personal opinion of what is fair undermines that basic trust Americans have always had and should always expect in an American court of law.

The President is free to nominate whomever he likes. But picking judges based on his or her perceived sympathy for certain groups or individuals undermines the faith Americans have in our judicial system. So throughout this nomination process, the impartiality of judges is a principle that all of us should strongly defend.

In a nation of laws, the question is not whether a judge will be on the side of one group or another. It is not ''whose side,'' the judge is ''on,'' as a senior Democrat on the Judiciary Committee framed the issue during another debate over a Supreme Court nominee. The issue is whether he or she will apply the law evenhandedly.

Once the President chooses his nominee, Senate Republicans will work to ensure the Senate can conduct a thorough review of their record, and a full and fair debate over his or her qualifications for the job. This is a responsibility we take seriously, and one that the American people expect us to carry out with the utmost deliberation.

RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

Mr. MCCONNELL. Mr. President, I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. DODD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. DODD. What is the pending business before the Senate?

HELPING FAMILIES SAVE THEIR HOMES ACT OF 2009

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will resume consideration of S. 896, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 896) to prevent mortgage foreclosures and enhance mortgage credit availability.

Pending:

Dodd/Shelby amendment No. 1018, in the nature of a substitute.

Corker amendment No. 1019 (to amendment No. 1018), to address safe harbor for certain servicers.

Dodd (for Grassley) amendment No. 1020 (to amendment No. 1018), to enhance the oversight authority of the Comptroller General of the United States with respect to expenditures under the Troubled Asset Relief Program.

Dodd (for Grassley) amendment No. 1021 (to amendment No. 1018), to amend Chapter 7 of title 31, United States Code, to provide the Comptroller General additional audit authorities relating to the Board of Governors of the Federal Reserve System.

Mr. DODD. Mr. President, my understanding is my friend and colleague from Tennessee has an amendment which is in order. I am prepared to defer to him. Then when he completes his remarks, I will respond.

I believe Senator MARTINEZ of Florida may be coming over as well. I understand we have an agreement to have a vote at 10:50. Is that correct?

The ACTING PRESIDENT pro tempore. The Senator is correct.

Mr. DODD. I yield the floor.

AMENDMENT NO. 1019

The ACTING PRESIDENT pro tempore. The Senator from Tennessee is recognized.

Mr. CORKER. Mr. President, I rise to speak on amendment No. 1019. Let me start by saying I appreciate the work Senators DODD and SHELBY have done to bring the bill to the floor. I know they are trying to solve a number of problems that exist right now as relates to homeowners in our country trying to reposition where they are with their homes.

I know there are a number of issues with HOPE for Homeowners that was passed last summer that they are trying to solve. I say to the Senator from Connecticut, I appreciate his efforts. I appreciate the efforts of Senator SHELBY.

The amendment I am offering and on which we will be voting tries to make the safe harbor arrangement that exists in this bill something that is fair to all folks involved in these loans. Most people are aware of pooling arrangements where, in essence, there are servicers who take care of the indebtedness against a homeowner. They pool these together through the securitization that has taken place in the past in order to deal with homeowners. There has been great difficulty in the past in trying to move programs along so we can modify these mortgages.

The problem with this bill, though, is that under the safe harbor arrangement that has been put in place, it does not necessarily do what is best for the homeowner and doesn't necessarily do what is best for the investors, as many Americans have these in their 401(k)s. What it does do is an excellent job of taking care of the large four banks that do the bulk of the servicing: J.P. Morgan, Wells Fargo, Citigroup, and Bank of America. This bill actually incents them. We are paying them money to do what is in their best interest.

Most of these large banks actually hold the second mortgages, not the first mortgages. The first mortgages are the ones I think most of us realize have priority. Those are the loans that allowed you to go into and actually purchase the home in the first place. Then these banks came along, in some cases unwittingly, and participated in predatory-type lending. So these banks, in essence, own most of the second mortgages, the home equity loans. They also own a huge portion of the credit card debt that many of these consumers have. We are paying them in this bill to actually deal with these mortgages in a way that is in their best interest. They have the lesser amount of security, but they also have built-in conflicts of interest where, in essence, if they can do things to cause these consumers to have the secondary debt taken care of, it is in their best interest to do that.

I think this is a huge problem. I find it incredible that we, in essence, in this body would pass a bill where we, in essence, are paying the fox to guard a chicken house that is in their best interest. That is what this bill does.

What our amendment would do is say to these servicers, these people who are taking care of these mortgages, which is servicing the first and second mortgage—again, them owning mostly the second mortgages—what it would do is say they have to look at all options, not just the ones cited in the bill.

For instance, if a homeowner would be better served by having forbearance, meaning for reduction of principal or something such as that, or maybe a short sale, something else that might be in much better stead for the homeowner and for the investor, the servicer doesn't have to do that. All the servicer has to do in this bill is look at one of two programs—the Obama administration's modification program or the HOPE for Homeowners modification program, just one, not both—and compare it to foreclosure. If it is better off going with one of these two programs, they move it into those programs, even though it may not be in the homeowner's best interest and even though it may not be in those many Americans across our country who have these first mortgages in their 401(k)s, not in their best interest. Typically, though, it is going to be in the servicers' best interest, these four large banks that are being paid money by this bill to actually pursue this servicing in a manner that is in their best interest.

I hope everyone will join me in asking these servicers to not just look at what is in their best interest but to actually first look and see what is in the best interest of those people who own the first mortgages and for those people who actually are in these homes who are trying to stay in these homes. There are provisions here that actually

make it worse for the homeowner, in that, basically, much of the debt gets pushed off into 5 years and actually defers their paying, actually makes their situation even worse than it is today. But in the short term, it might make it better, again, for these four large banks.

I am somewhat surprised the sponsors of this bill, whom I have a lot of respect for and work with on a number of issues, are not accepting this commonsense amendment, which says to these servicers, who have a contract, by the way, for those people whom they are servicing these mortgages for, to say that they have to look at everybody's best interest, not their own self-interest, prior to making changes in these mortgages. It is pretty astounding to me. I am still not sure I understand.

Let me make one other point. Last week we, as a body, both sides of the aisle in a bipartisan way, turned away something called cram-down, which gave judges around the country the ability to change the terms of a first mortgage. This body, in a bipartisan way, said we should not be letting the courts change contracts. That is something that is foreign to an American way of thinking. By the way, courts, at least judges, are appointed or elected. They are in positions of public service. What this bill does instead is, it pays servicers, many of which have contributed to this problem in a huge way, to do things that in many cases are in their own self-interest, breaking contract law, and in many cases hurting the homeowner and hurting the investors.

I hope everybody will see the commonsense nature of this amendment. I hope we can pass this amendment and cause the work that Senators DODD and SHELBY have done to improve the situation that exists, to make it even fairer to all involved.

The ACTING PRESIDENT pro tempore. The Senator from Connecticut.

Mr. DODD. Mr. President, I see our colleague from Florida has arrived. I will take a few minutes and then ask unanimous consent that he be recognized as the original author of the safe harbor provision so he has a chance to explain his point of view.

Let me begin. Again, it is not necessarily the most compelling of arguments, but I think it is worthy of note that those organizations who are opposed to the amendment of the Senator from Tennessee include the Consumer Federation of America, the National Community Law Center, the National Association of Consumer Advocates, the Housing Policy Council, the Financial Roundtable, the Center for Responsible Lending, the Mortgage Insurance Corporation, mortgage bankers, and the ABA. This is a pretty rare collection, when we get the major consumer groups that watch all this stuff very carefully, as well as some of the major lending institutions. They never come together on anything. It is a unique moment on this proposal.

Let me say to my friend from Tennessee, I don't like the situation we are in either. This is not the ideal world because his point about contracts is a valid one. There is no question. I pointed out there are contracts with second homes and vacation homes and the like as well. We had no problem with the cram-down with mortgages involved there. We have a prohibition on primary residences, but we make the exception with other properties. Frankly, had we taken the Durbin amendment, that might have minimized the importance of what we have here.

Here is the problem: 10,000 people a day are losing their homes; 20,000 a day are losing their jobs. The question is, How can we possibly get the kind of incentives so the bankers, the servicers, the lenders, and the borrowers can modify these mortgages? We now have 11 million homes in this country where the mortgage exceeds the value of the property. If we don't step up soon, those numbers will explode. We have a moratorium on foreclosures in certain areas, and that is just building up a backlog that if we don't end up with some means by which that borrower and lender can work out an arrangement that they can modify the mortgage, we will face a cascading effect which most people agree is the root cause of our financial difficulties, beginning with predatory lending and subprime lending that helped create this problem with no-documentation loans, the liar loans and the like.

What we have crafted is a rather narrow answer. They have a safe harbor provision which is very broad and, frankly, it can be narrowed. That is what Senator MARTINEZ has done with his proposal. What we are talking about are loans in the private label securities. That represents about 16 percent of what we are talking about. Yet within that 16 percent, in excess of 62 percent of those loans, are seriously delinquent loans. So while it is a relatively small number compared to the total mortgages being written, in terms of delinquent mortgages, it represents a fairly significant majority. We are narrowly dealing with those.

Then we are talking about two circumstances in which they voluntarily can move. That is with the Obama plan or the HOPE for Homeowners. We are not limiting it. If people don't want to do it, there is no requirement that they do it. We are trying to remove one of the great barriers, and that is the fear of litigation. The servicers are saying: We would like to do this. We understand the value of it. We want to get paid. Banks want to get paid. Borrowers want to stay in their homes. Everybody seems to agree on that. Here is the problem: If we end up modifying this, the investor, not an illegitimate point, says: Wait a minute, we had a contract with you, Mr. Servicer. You are going to now modify this, violating our interests as an investor. Therefore, we are going to sue you.

That is the fear. So the servicer says: I am not going near this. I respect the fact the borrower would like to get out of this situation in an affordable mortgage. I would like to get paid something in the process. But I will not go through the kind of litigation that will occur if there is not a safe harbor. Hence, the Martinez amendment.

In these narrow circumstances involving 16 percent of this market, and of which 62 percent are the delinquent mortgages, under two fact situations, the HOPE for Homeowners and the Obama mortgage modification plan, we provide for that safe harbor, saying to that servicer, if, in fact, you move forward, we will provide you with that harbor and avoid the potential of litigation, in some cases even frivolous litigation.

Again, in a perfect world, would I like to avoid that and do what my friend from Tennessee wants? Absolutely. But there are no perfect choices, and yet there are some potential dangers. I don't like setting a precedent. We narrowly define this in time and circumstance, only involving those that already occurred, and the problem dies or is sunsetted in December of 2012. So this is not a perpetual program. It is limited to the fact situation, limited to opportunities in order to try and provide some relief primarily to the consumer, to the person holding that mortgage or the person having that mortgage who runs the risk of losing their home.

We have tried, for a year and a half, all sorts of different ways. My friend from Tennessee and the former Secretary of Housing and Urban Development, Senator MARTINEZ, who knows something about these issues, will recall we tried, in the spring of 2007, to get these people together to try and work out things. They promised they would try. They never did. Then we drafted legislation, far from perfect because we are back today talking about it, called HOPE for Homeowners. We tried all sorts of means by which we could slow down the foreclosure problem.

Regretfully, we have not been as successful as we would like. There is no guarantee this will work as well as we would like either. I say that as a coauthor of this bill overall, and I appreciate my colleague's fine comments about the effort. But it is an attempt to try and provide some space, in these very delinquent mortgages, to provide an opportunity for a modification so people can stay in their homes, borrowers can keep their homes, lenders get something back, rather than going to foreclosure in which the implications for everyone are devastating.

Again, the investor does not have an illegitimate complaint, but in the context of balancing these interests, where, again, no one is going to come out of this perfect, in a way I think it is in our interest to try and do what we can to keep people in their homes and have the lenders be able to get something back. Hence, that is why you see this very unique coming together of

various interest groups, from the consumer advocates to the major lending associations, saying on this point, they think this is the right—at least worthy of our attempt to get this right.

Again, I respectfully say to my colleague from Tennessee, I appreciate his points. He and I talked about this. But I honestly believe in this case this would be a mistake to accept this amendment and to run the risk of losing the opportunity to get that safe harbor opportunity.

With that, I yield to my colleague from Florida.

The ACTING PRESIDENT pro tempore. The Senator from Tennessee.

Mr. CORKER. Mr. President, if the Senator from Florida would allow me to speak for 1 minute.

Mr. DODD. Yes.

Mr. CORKER. Mr. President, I wish to make it clear because I think the Senator from Connecticut, in doing a good job in talking about his position, made it seem as if we are against loan modifications. Look, there were 134,000 loan modifications last month. I am all for loan modifications.

But what this bill does now is it gives those four largest banks, and many others, the ability—we are paying them, we are giving them the ability to do things that are in their self-interest and not in the homeowners' self-interest—let me say that one more time: not in the homeowners' self-interest—and be totally obligation free, with no legal recourse whatsoever against them.

What this amendment does is say we are giving them safe harbor, but they have to look at a variety of ways to make sure the homeowner and the investor both are being treated fairly. This bill is very narrow. It allows them to wash their hands and do things that are in their best interest alone, and we are paying them to do that with no legal recourse. To me, that is far, far, far more than we should be doing in legislation such as this.

I thank the Senator.

The ACTING PRESIDENT pro tempore. The Senator from Connecticut.

Mr. DODD. Mr. President, a quick response.

The homeowner gets to keep their home, hopefully, at a rate they can afford to pay. That is not insignificant, I say with all due respect. The idea there is nothing in here that benefits homeowners—and I am not interested in helping out the four big banks at all. I am interested in making it possible for this to avoid litigation. That is what the concern is; that if we are going to do this, we run the risk because it violates a contract potentially, and if you do that, you are subject to a lawsuit; hence, nothing happens.

That is the fear: nothing happens. If the servicers do not act, then you end up with the borrower losing their home, the lender ends up getting nothing out of it at all; and, hence, the reason why this safe harbor is designed to get us to the point where both the borrower and the lender—again, we are not interested in anyone coming out of this situation with some enrichment, but the idea of slowing down this cascading problem of foreclosures, I think is in everyone's interest, as my colleague has pointed out.

Several Senators addressed the Chair.

The ACTING PRESIDENT pro tempore. The Senator from Tennessee.

Mr. CORKER. Thank you, Mr. President.

Let me make one more point. I will be brief.

Mr. MARTINEZ. Point of order, Mr. President.

The ACTING PRESIDENT pro tempore. Who yields time?

Mr. MARTINEZ. Mr. President, if I could inquire of the Chair——

The ACTING PRESIDENT pro tempore. Who yields time?

The Senator from Tennessee has the floor.

Does the Senator from Tennessee yield to the Senator from Florida?

Mr. CORKER. Certainly. Yes.

The ACTING PRESIDENT pro tempore. The Senator from Florida.

Mr. MARTINEZ. Mr. President, I would like to be heard and have an opportunity to join in the discussion regarding this very important issue. I appreciate the fact that the Senator from Tennessee has spoken, rebutted, and wants to speak again. I appreciate that. But I would like to have an opportunity to express my point of view at some point. If the Chair could keep that in mind, I would like to do that at some appropriate point.

The ACTING PRESIDENT pro tempore. The Senator from Tennessee.

Mr. CORKER. Mr. President, unless I am rebutted, this will be my final point.

I would like to make a point that from the standpoint of the homeowner, in many cases, they would be much better off if they were given the opportunity to refinance, given the opportunity to refinance at a lower rate and a longer amortization with organizations that provide that opportunity today.

The servicer has no obligation to even look at a refinancing such as that, for which in many cases the homeowner and the investor would be better off. That is not a part of this bill. I find that to be a major flaw.

I yield my time, Mr. President.

I thank the Senator from Florida for being so patient.

The ACTING PRESIDENT pro tempore. The Senator from Florida is recognized.

Mr. MARTINEZ. Mr. President, I did not want the opportunity to pass to be heard on this issue, and I would be pleased to have the Senator from Tennessee make a rebuttal after I make my comments. But at some point I did wish to have an opportunity to express my point of view on this issue.

Here is the situation we are in. As the chairman of the Banking Committee has said, this is not a perfect world. We are in a heck of a mess. The people in Florida, by the thousands, are having their homes foreclosed. Unemployment is almost 10 percent because about 25 percent of Florida's economy is dependent on building homes and on the construction industry, which is completely stopped, for the most part.

We are in a situation now where if I hold a forum in a city such as Fort Myers, 450 people show up desperate for a solution to their problem to stay in their home. We have some banks there, and we have some people from HUD, from HOPE for Homeowners—all these people coming together—to try to work things out, and many times it happens. It is not nearly keeping up with the rate of foreclosures going on across the country, but some are getting worked out.

How many more would be worked out if we had a safe harbor provision—balanced—that keeps the investor community from being able to bring legal action against the servicers? I think we would have thousands more. Would the country be better off? Absolutely. Would the homeowner be better off? Absolutely. Would everyone involved in the business of housing and housing finance be better off? I submit to you it would be so.

One of the reasons many of these loan modification programs we have had—and they began in the Bush administration; they have continued now in the Obama administration but they have not worked because of the safe harbor need, because of the legal ramifications once a servicer perceives the threat of litigation. The safe harbor provisions of this legislation remove that perceived risk.

This bill, which includes a safe harbor that is lots narrower than the one in the House version of this bill, makes it clear that so long as a mortgage servicer concludes that, from the perspective of the investors, an approved loan modification is better than foreclosure; that is, modification will yield greater value than foreclosure—in other words, the investor is protected to a degree—then the servicer cannot be held liable for choosing to modify the loan and not foreclose.

This legislation strengthens the current Federal loan modification guidelines to assure that only deserving homeowners benefit from a modification. Individuals with a net worth of more than $1 million cannot qualify for a modification. Individuals who have been convicted of fraud would also be barred. Any participant must certify that he or she has not intentionally defaulted on any other debt before a modification is going to be permitted.

Unlike the safe harbor provision in the House bill, this bill's safe harbor would still permit investors to hold a servicer liable if the servicer acts unreasonably or improperly fails to maximize investor value through instigating a foreclosure. In other words,

there will still be a foreclosure if, in fact, it is in the best interest of the investor.

The safe harbor provisions in this bill would help to strike the proper balance between the future health of residential mortgage credit in this country and the rights of investors.

I think what we need to understand a little better is that the intent of the Corker amendment—while it is good; and I hate to disagree with the Senator from Tennessee, whom I so often find myself in full agreement with, but in this instance, I must because he requires that all potential alternatives to foreclosure be evaluated and to select the one that is best for the investor, regardless of whether that is in the best interest of the homeowner, before the safe harbor litigation protections are triggered. So before the safe harbor litigation protections are triggered, all other options would have to be reviewed and considered. Basically, there is no safe harbor at all. I do not think, if the Corker amendment was adopted, we would see a lesser number of foreclosures.

There are two problems with this amendment.

The language of the amendment appears to fail to achieve its stated intent. The current language appears to require that a servicer evaluate all possible alternatives to foreclosure but only provides a safe harbor if the servicer chooses a government-sponsored loan modification.

The second problem is it fails to strike the proper balance among the interests of the servicers, the investors, and the homeowners. We tried to strike a balance among all these competing interests in what we acknowledge is an imperfect world.

The current language of the bill is better because it forces servicers to make a reasonable determination about whether an investor would be better off with a loan modification or foreclosure. It allows the current loan modification efforts—that allow homeowners to remain in their homes—an opportunity to actually work.

This allows investors to benefit from a modification, where it is appropriate, while decreasing the number of foreclosures and increasing the number of families who can remain in their homes.

Some have alleged constitutional concerns about this legislation, and I have to tell you, in these kinds of moments, I think we do not want to violate our Constitution, but it is necessary sometimes we step outside a comfort zone, and it is undisputed Congress has the power to regulate the residential mortgage industry. We believe we are on safe legal grounds in that and that this does not constitute a taking or even come close to that.

I believe the well-intended Corker amendment would not improve the current situation as it relates to the number of workouts that are taking place, and foreclosure would still be the rule of the day. I believe the language in the bill is superior. It strikes a better balance. It is not as broad as the House language, it is not as restrictive as the Corker language, but it hits it just about right.

Mr. President, I yield the floor.

The ACTING PRESIDENT pro tempore. Who yields time?

The Senator from Tennessee.

Mr. CORKER. Mr. President, I thank my colleague from Florida, who has served our country well both as a Senator but also as Secretary of HUD and has tremendous amounts of experience in this area. We disagree on this issue.

My amendment does not just seek to do what is best for the investor. It seeks to do what is best for the homeowner and asks the servicer to not just compare one alternative to foreclosure but an array of alternatives to foreclosure.

I have to tell you, I know of people in financial distress, as most of us do. I think I would like for these major banks that basically are servicing credit card debt and home equity loans, I would like for them to have to look after the interests of the homeowner and the investor in every way they can prior to moving to foreclosure. That is what this amendment does.

It is a commonsense amendment. I think we have moved ourselves into a situation now that is potentially worse, as I said before, than what we did the other day, which was that the other day we rejected giving judges the ability to unilaterally change contracts. Now we are going to be paying, in large portions, the four largest banks in the country, we are going to be paying them our money, taxpayer money to do things that in many cases are in their best interest and not in the homeowner's best interest and the investor's best interest. I find that problematic.

In years to come, if this legislation passes without this amendment, we are going to look back and realize we did some things that may have sounded great in the middle of a crisis but we did some things that 4 or 5 years from now we are going to wake up and realize have done great harm to the very homeowners this bill seeks to help.

Mr. President, I thank you for the time.

I thank the Senator from Florida and the Senator from Connecticut for the thoughtful conversations they have put forth. I think this legislation is flawed. I know there are some other components of this bill that are very good. As a matter of fact, I have authored, with the major proponent, the Senator from Connecticut, large portions of this bill. But this safe harbor agreement has many problems. I think it is a shame, if this amendment is not adopted, we are going to end up with a piece of legislation that does a lot of good but also does a lot of harm and sets precedents in this country we are going to live to regret.

Mr. President, I yield my time.

The ACTING PRESIDENT pro tempore. The Senator from Connecticut is recognized.

Mr. DODD. Mr. President, I will take a minute. Let me just say again that I have great respect for my colleague from Tennessee. He and I work closely together on a lot of issues. He is invaluable as a colleague, as is Senator MARTINEZ, former Secretary of Housing, who understands a lot of these issues well, not just from a senatorial perspective but from his previous job as Secretary of Housing and Urban Development in Washington.

Again, this is a program that is limited in time, limited in scope.

As both the Senator from Florida and I have said, this is far from a perfect world in terms of how we have to balance the various interests in all of this. I am not unmindful of the fact that we are in uncharted waters. We all recognize as well that we are in uncharted waters in a larger sense. We are in a time that none of us in this Chamber—with the exception of my colleague from West Virginia and a couple others—can recall. Our parents and grandparents talked to us about times like these almost a century ago.

While we are taking action here—and I hear my colleague from Tennessee, who made a legitimate point that we establish precedent here, and I understand that. People will look back, as we have looked back, to previous decades to seek ideas that might help us get back on track again and restore that optimism and confidence in our country. So we are moving into an area that is new, but as the Senator from Florida pointed out, we are in a time that is new as well.

We have tried, as we know, in numerous ways over the last many months to figure out ways to get at the root of this foreclosure problem. Every idea you can come up with has its shortcomings. We have yet to find the perfect one that everybody agrees on. If somebody has it, please let us know because we are looking for it to get us to the point where we can put the brakes on foreclosures, not because you impose a moratorium but because people can afford their mortgages, lenders are being paid, the economy is moving, credit is flowing, businesses are growing, and joblessness is no longer increasing but declining—all of the things we want to see.

This proposal we have advocated here, the safe harbor, in a narrowly crafted way, limited in time, scope, and circumstance, we believe will help in that regard. Is it perfect? Far from it. Is it necessary? Absolutely. That is why I think you see the collection of organizations. I don't want to overemphasize this point, but they have come together to say this is an idea worth trying. Rarely do you get that kind of cooperation.

At least there is some indication that the other body might be willing to accept our language and take this bill, and the other provisions of the bill—

my colleague is correct—really are important and are needed immediately. We don't need to delay this further. That is not a reason to be for or against the amendment, but I just point out that the other side would agree to the Martinez idea.

I ask our colleagues to, at the appropriate time, oppose this amendment—and I say that respectfully—so that we can move on to the other amendment and see if we can reach a final vote this evening or sometime in the morning.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Florida is recognized.

Mr. MARTINEZ. Mr. President, how much time remains?

The ACTING PRESIDENT pro tempore. Two minutes 16 seconds.

Mr. MARTINEZ. Mr. President, I wish to conclude and follow up on something the chairman said.

The situation we are in is critical. Striking some balance that reduces foreclosures is worth the risk. The corrosive effect of foreclosures—and all of the things we have tried have nipped at the issue but have not fixed it. The corrosive effect of foreclosures continues this downward spiral of home prices, which escalates the problem the banks have. Assets were becoming toxic yesterday, and are today and tomorrow, because of the decline in home values. There is a dramatic decline in my State, and the biggest reason for that is foreclosures.

The foreclosures set a new floor on what the prices in the neighborhoods are, and that floor then begins to be what other purchasers are willing to pay. That, in effect, then reduces home equities, reduces the opportunities for folks to stay in their homes, and it is a downward spiral we have to stop. This is an effort to try to stop it.

I am delighted to hear the Senator say that the House may take our language. I think their language is very broad, frankly. What Senator CORKER has raised in his concerns would be heightened by the House language. I think our language, in its imperfection, strikes a decent balance among the interests of all parties and perhaps will increase the number of workouts and reduce the number of foreclosures.

I also speak in opposition to the Corker amendment, and I would be excited to see our bill move forward with this provision and the many others that are helpful.

I yield the floor.

The ACTING PRESIDENT pro tempore. All time has expired.

Mr. DODD. Mr. President, so the pending matter is the Corker amendment?

The ACTING PRESIDENT pro tempore. The Senator is correct.

Mr. DODD. Mr. President, I ask for the yeas and nays on the amendment.

The ACTING PRESIDENT pro tempore. Is there a sufficient second?

There is a sufficient second.

The question is on agreeing to the amendment.

The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. DURBIN. I announce that the Senator from South Dakota (Mr. JOHNSON), the Senator from Massachusetts (Mr. KENNEDY), the Senator from West Virginia (Mr. ROCKEFELLER), and the Senator from New Hampshire (Mrs. SHAHEEN) are necessarily absent.

Mr. KYL. The following Senator is necessarily absent: the Senator from Arizona (Mr. MCCAIN).

The PRESIDING OFFICER (Mrs. GILLIBRAND). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 31, nays 63, as follows:

[Rollcall Vote No. 178 Leg.]

YEAS—31

Alexander	Crapo	McConnell
Barrasso	DeMint	Murkowski
Bennett	Enzi	Risch
Bond	Graham	Roberts
Brownback	Grassley	Sessions
Bunning	Gregg	Shelby
Burr	Hatch	Thune
Coburn	Inhofe	Vitter
Cochran	Johanns	Wicker
Corker	Kyl	
Cornyn	Lugar	

NAYS—63

Akaka	Feingold	Merkley
Baucus	Feinstein	Mikulski
Bayh	Gillibrand	Murray
Begich	Hagan	Nelson (NE)
Bennet	Harkin	Nelson (FL)
Bingaman	Hutchison	Pryor
Boxer	Inouye	Reed
Brown	Isakson	Reid
Burris	Kaufman	Sanders
Byrd	Kerry	Schumer
Cantwell	Klobuchar	Snowe
Cardin	Kohl	Specter
Carper	Landrieu	Stabenow
Casey	Lautenberg	Tester
Chambliss	Leahy	Udall (CO)
Collins	Levin	Udall (NM)
Conrad	Lieberman	Voinovich
Dodd	Lincoln	Warner
Dorgan	Martinez	Webb
Durbin	McCaskill	Whitehouse
Ensign	Menendez	Wyden

NOT VOTING—5

Johnson	McCain	Shaheen
Kennedy	Rockefeller	

The amendment (No. 1019) was rejected.

Mr. DODD. I move to reconsider the vote and to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Connecticut.

AMENDMENT NO. 1036 TO AMENDMENT NO. 1018

Mr. DODD. Madam President, I ask unanimous consent that the pending amendments be set aside so I may call up, on behalf of Senator KERRY, amendment No. 1036.

The PRESIDING OFFICER. Is there objection?

The Chair hears none, and it is so ordered.

The clerk will report.

The legislative clerk read as follows:

The Senator from Connecticut [Mr. DODD], for Mr. KERRY, for himself, Mrs. GILLIBRAND, and Mr. REID, proposes an amendment numbered 1036 to amendment No. 1018.

The amendment is as follows:

(Purpose: To protect the interests of bona fide tenants in the case of any foreclosure on any dwelling or residential real property, and for other purposes)

At the end of the amendment, add the following:

TITLE V—PROTECTING TENANTS AT FORECLOSURE ACT

SEC. 501. SHORT TITLE.

This title may be cited as the ''Protecting Tenants at Foreclosure Act of 2009''.

SEC. 502. EFFECT OF FORECLOSURE ON PRE-EXISTING TENANCY.

(a) IN GENERAL.—In the case of any foreclosure on a federally-related mortgage loan or on any dwelling or residential real property after the date of enactment of this title, any immediate successor in interest in such property pursuant to the foreclosure pursuant to the foreclosure shall assume such interest subject to—

(1) the provision, by such successor in interest of a notice to vacate to any bona fide tenant at least 90 days before the effective date of such notice; and

(2) the rights of any bona fide tenant, as of the date of such notice of foreclosure—

(A) under any bona fide lease entered into before the notice of foreclosure to occupy the premises until the end of the remaining term of the lease, except that a successor in interest may terminate a lease effective on the date of sale of the unit to a purchaser who will occupy the unit as a primary residence, subject to the receipt by the tenant of the 90 day notice under paragraph (1); or

(B) without a lease or with a lease terminable at will under State law, subject to the receipt by the tenant of the 90 day notice under subsection (1),

except that nothing under this section shall affect the requirements for termination of any Federal- or State-subsidized tenancy or of any State or local law that provides longer time periods or other additional protections for tenants.

(b) BONA FIDE LEASE OR TENANCY.—For purposes of this section, a lease or tenancy shall be considered bona fide only if—

(1) the mortgagor under the contract is not the tenant;

(2) the lease or tenancy was the result of an arms-length transaction; or

(3) the lease or tenancy requires the receipt of rent that is not substantially less than fair market rent for the property.

(c) DEFINITION.—For purposes of this section, the term ''federally-related mortgage loan'' has the same meaning as in section 3 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2602).

SEC. 503. EFFECT OF FORECLOSURE ON SECTION 8 TENANCIES.

Section 8(o)(7) of the United States Housing Act of 1937 (42 U.S.C. 1437f(o)(7)) is amended—

(1) by inserting before the semi-colon in subparagraph (C) the following: ''and in the case of an owner who is an immediate successor in interest pursuant to foreclosure—

''(i) during the initial term of the lease vacating the property prior to sale shall not constitute other good cause; and

''(ii) in subsequent lease terms, vacating the property prior to sale may constitute good cause if the property is unmarketable while occupied, or if such owner will occupy the unit as a primary residence''; and

(2) by inserting at the end of subparagraph (F) the following: ''In the case of any foreclosure on any federally-related mortgage loan (as that term is defined in section 3 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2602)) or on any residential

real property in which a recipient of assistance under this subsection resides, the immediate successor in interest in such property pursuant to the foreclosure shall assume such interest subject to the lease between the prior owner and the tenant and to the housing assistance payments contract between the prior owner and the public housing agency for the occupied unit, except that this provision and the provisions related to foreclosure in subparagraph (C) shall not shall not affect any State or local law that provides longer time periods or other additional protections for tenants.''.

SEC. 504. SUNSET.

This title, and any amendments made by this title are repealed, and the requirements under this title shall terminate, on December 31, 2012.

Mr. DODD. I thank the Chair, and let me just say to my colleagues—and I see my friend, Senator SHELBY, on the floor of the Senate as well—that we are open for business, as the expression goes. We have a number of amendments—a significant number—on which I think we might be able to reach agreement. We are not quite there on those, but we can do that. There are several that require votes, and the leadership would obviously like to complete this bill this evening, if it is possible.

My good friend from Alabama has been a good partner in all of this, in working on this, and so we invite all those with amendments to come over. We can offer them, debate them, and possibly reach agreement on them as well and adopt them as part of the bill. So I would just make that point.

I see one of my colleagues on the Senate floor but who is maybe not ready yet, so I will suggest the absence of a quorum until we get someone to show up.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. CRAPO. Madam President, I ask unanimous consent the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from Idaho is recognized.

Mr. CRAPO. Madam President, I am coming to the floor to thank Chairman DODD for working with us on some important pieces of this legislation. Included in this legislation is the increased borrowing authority for both the FDIC and the NCUA, so they can immediately access the necessary resources to resolve failing banks and credit unions and provide timely protection for insured depositors. Earlier this year, Senator DODD and I joined in introducing legislation that would increase the borrowing authority of the FDIC, and since that time we have expanded that legislation to provide parallel authority for the NCUA, for credit unions, and to include an assumption in the budget resolution about the need to pass legislation to ensure adequate resources are available to the FDIC and the NCUA.

This legislation is similar to what is included in the Dodd-Shelby substitute that was passed by the Banking Committee on a voice vote in an amendment to the credit card legislation we will be looking at later on.

I come to the floor simply to make note of how important it is that we continue to pursue this legislation and to thank Senator DODD for working so closely with me to make sure it happens. When you look at today's economic climate and the threats facing us in the financial industry, we have to provide the necessary tools to our financial institution regulators so they can protect us as best they can. One important piece—and I am glad to say one of those pieces about which there is very little controversy—is the need to make sure we strengthen the FDIC and NCUA to make sure they can undertake their statutory responsibilities in the context of failing institutions.

I would be remiss if I didn't say I wish to be sure that both the FDIC and NCUA are very careful in the exercise of these authorities, to make sure they do not do more harm than good and harm institutions that could otherwise have survived, by stepping in. But when the true need comes, they need to have the authority.

This language deals with significant reforms that need to be undertaken, and undertaken as soon as possible, so our regional banks do not face very significantly increased levies and requirements for funding the FDIC and NCUA operations.

It would permanently increase the Federal Deposit Insurance Corporation's borrowing authority from their current level of $30 billion to $100 billion, with additional authority, that is temporary, to allow them to get up to $500 billion in the case of emergency circumstances.

It would permanently increase the borrowing authority of the NCUA from the current $100 million, with authority for a temporary increase up to $30 billion. The temporary authority for both the FDIC and the NCUA could only be used if determined necessary in the FDIC Board of Directors' written recommendation and support of two-thirds vote; the Board of Governors for the Federal Reserve system, with written recommendations and support of two-thirds vote; and the Secretary of the Treasury, in consultation with the President.

The FDIC and NCUA need to have access to sufficient resources to deal with the potential costs for seizing failing institutions we are facing in our country right now. Assets in the banking industry have increased since 1991 from $4.5 trillion to $13.6 trillion at the same time that no increases in this borrowing authority have been authorized. The assets in the credit union industry have also significantly increased since their borrowing authority levels were established.

It is important to note that this borrowing authority is not coming from taxpayer dollars. The levies and the assessments that are made on the participants in the financial industry themselves, the depository institutions, are the source of the dollars that would cover this loan authority. I think most people understand, but what happens in the case of a failing institution is the FDIC steps in immediately and protects all depositors so the depositors can have that assurance of the Federal guarantee of their deposits in these depository-protected institutions. Then the FDIC basically works out the resolution of the remaining assets of the failed institution and the banking institution itself. Other depositors, through their assessments, pay for the cost of the operation of this program. We are simply increasing the borrowing authority to make sure the FDIC and the NCUA have the resources necessary to deal with these very difficult and challenging times.

In addition, the borrowing authority would allow the FDIC and the NCUA to lower their recent special assessments that went out to the banking and credit industry. In other words, this would allow us to kind of smooth out that process by which the depository institutions themselves fund this process and not create huge liquidity and financial pressures on the banks that are not facing the potential of any kind of FDIC intervention but which are being looked to to bear the cost of these problems as we move forward.

The language ensures that the FDIC and the NCUA have the resources necessary to address future contingencies and to fulfill the Government's commitment to protect America's depositories.

As I said at the outset, I wish to be sure the NCUA and the FDIC are very careful in the utilization of the authorities we have given them. There are some concerns already being raised about the fact that perhaps the stress test and some of the other analysis that is being put into place and the evaluation of the solvency of our banks need to be fine-tuned so we do not unnecessarily utilize these authorities where a better resolution, better activities can be pursued. But when it does become necessary, we need to be sure our depositors are protected. Once again, I thank Senator DODD for his strong support and work on this issue.

There is another issue I have been working on with Senator DODD. I wish to make it clear that the frustration I am going to share right now is not directed at him because he has been working very hard to address this same issue and trying to resolve it. But I do believe it needs to be said that there is another piece of the issue we must resolve.

Earlier, on previous legislation, language was included dealing with depository institutions that gave the FTC much broader jurisdiction than it should have had with regard to depository institutions. The language was intended to give broader jurisdiction and clarification of jurisdiction to the FTC's regulation of other, nondepository institutions, but the way the

wording in the bill was written it included depository institutions—wrongly.

We identified that issue at the time. We stood on this floor, a number of us Senators stood on this floor and pointed out that was not intended by the bill and that we would correct it. In fact, we said we would correct it at the first available opportunity. Now we are seeing opportunities arrive, and we cannot reach a conclusion with regard to the necessary correction of the legislation that gives unnecessary and confusing dual jurisdiction to the FTC now over depository institutions, which was not intended by this Congress and which will not be helpful, in terms of creating a duplicate regulatory system with which our regulatory institutions must deal.

Again, I stand and call for us to do what we agreed to do, which is to fix the FTC issue and make sure we carefully clarify the jurisdiction of the appropriate committees and the jurisdiction of the appropriate regulators over depository institutions.

I yield the floor.

The PRESIDING OFFICER. The Senator from Connecticut is recognized.

Mr. DODD. Madam President, before my colleague leaves the floor, I thank him as well. He has been a senior Member of the Banking Committee and has been an invaluable asset and partner on these issues. He understands regulatory reform as well as anyone and has dedicated a good part of his service on the committee to that issue. It was a pleasure to work with him on the issues he has mentioned in this bill, dealing with the FDIC and the National Credit Union Association. We are providing these resources. We think we have built in some pretty good safeguards so these guidelines will not be exceeded, but the best safeguards are for the institutions themselves to be cautious and prudent in utilization of these resources as well.

I underscore and endorse his comments on that point and I thank him immensely for his work on the bill, making it possible for us to arrive where we are this morning.

Lastly, I join him as well in his concerns about the Federal Trade Commission issue that I thought we successfully resolved in the colloquies we had here. Unfortunately, that was not, apparently, the case. We are still working at this. I want you to know Senator CRAPO's office is directly involved with ours and others we are negotiating with and will obviously pursue this matter. I am hopeful we can resolve it amicably but, if not, there will be a moment in the not-too-distant future we will have to vote. I would like to work things out to everyone's satisfaction without that, but if that is the case, we will have to do that. I join with him. I think the jurisdiction is clear on that matter, and I think most agree with us, but, obviously, from time to time, you need to bring these matters to a head and actually have a decision by the body. Again, I hope we can avoid that, but if not, I join him in that effort to provide that legislative effort. I thank him very much, and hopefully we will, this evening, complete work on this bill and send it off.

I am hopeful about the other body which, I am told, has looked on our efforts here with approving eyes, so we may be able to get it signed into law pretty quickly.

Mr. CRAPO. I thank the Chairman. I look forward to working with him.

Mr. DODD. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. THUNE. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 1030 TO AMENDMENT NO. 1018

Mr. THUNE. Madam President, I ask unanimous consent to call up and make pending amendment No. 1030.

The PRESIDING OFFICER. Without objection, the pending amendment is set aside. The clerk will report.

The legislative clerk read as follows:

The Senator from South Dakota [Mr. THUNE] proposes an amendment numbered 1030 to amendment No. 1018.

Mr. THUNE. I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To require the Secretary of the Treasury to use any amounts repaid by a financial institution that is a recipient of assistance under the Troubled Asset Relief Program to reduce the reauthorization level under the TARP)

At the end of the amendment, add the following:

TITLE V—TARP REDUCTION PRIORITY ACT

SEC. 501. SHORT TITLE.

This title may be cited as the ''TARP Reduction Priority Act''.

SEC. 502. FINDINGS.

Congress finds the following:

(1) On October 7, 2008, Congress established the Troubled Asset Relief Program (TARP) as part of the Emergency Economic Stabilization Act (Public 110-343; 122 Stat. 3765) and allocated $700,000,000,000 for the purchase of toxic assets from banks with the goal of restoring liquidity to the financial sector and restarting the flow of credit in our markets.

(2) The Department of Treasury, without consultation with Congress, changed the purpose of TARP and began injecting capital into financial institutions through a program called the Capital Purchase Program (CPP) rather than purchasing toxic assets.

(3) Lending by financial institutions was not noticeably increased with the implementation of the CPP and the expenditure of $218,000,000,000 of TARP funds, despite the goal of the program.

(4) The recipients of amounts under the CPP are now faced with additional restrictions related to accepting those funds.

(5) A number of community banks and large financial institutions have expressed their desire to return their CPP funds to the Department of Treasury and the Department has begun the process of accepting receipt of such funds.

(6) The Department of the Treasury should not reuse returned funds for additional lending for financial assistance.

(7) The United States Constitution provided Congress with the power of the purse hence any future spending of TARP funds, or other financial assistance, should be determined by Congress.

SEC. 503. TARP AUTHORIZATION REDUCTION.

Section 115(a)(3) the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5211 et seq.) is amended by inserting ''minus any amounts received by the Secretary for repayment of the principal of financial assistance by an entity that has received financial assistance under the TARP or any program enacted by the Secretary under the authorities granted to the Secretary under this Act,'' before ''outstanding at any one time.''

Mr. THUNE. Madam President, the amendment I offer today essentially follows along with the bill I introduced earlier called the TARP Reduction Priority Act. Essentially, this amendment reduces TARP authority by any amount of principal returned by a financial institution to the Treasury.

Again, by way of background, I spoke to this amendment a little bit last week. On October 7, 2008, as we all know, Congress passed the Troubled Asset Relief Program, or TARP, as part of the Emergency Economic Stabilization Act, authorizing $700 billion for the purchase of toxic assets from banks with the goal of restoring liquidity to the financial sector and restarting the flow of credit in our markets.

The Department of the Treasury, without consultation with Congress, changed the purpose of TARP and began injecting capital into financial institutions through a program called the Capital Purchase Program rather than purchasing toxic assets.

Financial lending was not increased with implementation of the CPP, and $218 billion, I believe, has been allocated thus far, despite the goal of the program. These institutions receiving funding through the CPP are now faced with additional restrictions related to accepting those funds.

A number of community banks and financial institutions have expressed their desire to return the CPP funds to the Department of the Treasury, and Treasury has begun the process of accepting receipt of these funds. However, because of the financial stress test that Treasury is currently conducting, it is possible Treasury will restrict banks from returning funds they received from the Capital Purchase Program.

In his testimony before the TARP Congressional Oversight Panel on April 21, 2009, Secretary Geithner stated that Treasury estimates $134.6 billion of TARP funds are still available. In that figure, he includes $25 billion which Treasury expects to receive back from banks under the CPP.

Geithner also stated that he believed the $25 billion is a conservative number and that private analysts predict more

will eventually be returned. Section 120 of the Emergency Economic Stabilization Act terminates the authority for TARP funds on December 31, 2009, and the Secretary can request an extension to the deadline not later than 2 years after enactment, which was October of last year, 2008. So keep in mind this restriction applies only to Treasury's issuance of new loans and does not cover the reuse of previously issued assistance that was returned to the Treasury.

So, essentially, my argument for why this piece of legislation, this amendment, is important is, until the December 31, 2009, expiration date or possibly longer, as I said earlier, if the Secretary is granted an extension, without this legislation Treasury can continue to use TARP funds, including those repaid, in any manner they see fit.

This is certainly not what Members of Congress envisioned when this legislation passed last year. These are taxpayer dollars. They should not become a discretionary slush fund for Treasury. Under the Constitution, Congress controls the power of the purse, and there are major concerns regarding the Treasury's handling of TARP funding. If the Treasury Department believes it needs additional funding to address problems in the financial sector, they should come to Congress to get that authority.

The inspector general, Neil Barofsky, stated in his quarterly report to Congress that 12 separate programs are being funded under TARP involving up to $3 trillion of Government and public funds. Amazingly, this is the equivalent to the size of the entire Federal budget, certainly not what Congress was told the funding would be used for.

Mr. Barofsky also mentioned on April 4, 2009, the CBO report which estimated that TARP will cost the Government $356 billion, meaning the Treasury will only be able to recover about $344 billion, or approximately 49 percent of the $700 billion that was originally authorized. When this program, as I said earlier, was initially pitched to Congress, Secretary Paulson argued that the Government could end up making money once the toxic assets were sold, after the economy recovered.

Clearly, based on what the inspector general is saying, that does not appear to be the case.

Because if the numbers CBO is using are correct, they are estimating that TARP will cost the Government $356 billion, and therefore only about $344 billion or 49 percent of it will actually be recoverable of the original $700 billion.

Barofsky's report spans 247 pages. It says that:

> The very character of the program makes it inherently vulnerable to fraud, waste, and abuse, including significant issues related to conflicts of interest facing fund managers, collusion between participants, and vulnerabilities to money laundering.

It would seem irresponsible to continue recycling money in the TARP if the very nature of the program makes it susceptible to fraud. In fact, the special investigator's office already has 20 criminal investigations underway.

What amendment No. 1030 does is amend the underlying bill to say that TARP funds that are repaid by financial institutions, if they choose to do it—and that is going to be in consultation with Treasury—if the funds come back in—and according to Secretary Geithner, about $25 billion of the amount they say is available under TARP, still available to lend, consists of moneys being paid back by financial institutions—that when those moneys come back in, they should reduce the amount, the principal amount of TARP available to be used.

Again, I offered a similar amendment to the fraud recovery bill a couple weeks ago. In that case, I offered it with the intention of having any funds paid back under TARP by financial institutions to be dedicated to paying down the public debt—in other words, to debt reduction. Under that arrangement, it was considered not to be germane. So when cloture was filed, it fell postcloture. It was not, therefore, able to be voted on. We worked with folks who are involved in trying to make sure this is germane, that it fits within the parameters of the bill under consideration. It addresses it in a slightly different way; that is to say, whatever TARP funds are repaid, it reduces the amount of TARP authority available to be used.

I hope my colleagues will support this amendment. It is a responsible thing to do. These are taxpayer dollars. Many of us, when we supported this last fall, had an understanding about how the funds would be used. They were used differently. It would appear at this point that much of the moneys put out under the program, which at the time we were told would be paid back, that will not be the case. As much as half or more of this is probably going to be lost.

It seems to me the dollars that are paid back should not be recycled or reused. They ought to reduce the amount of TARP lending authority that is available.

It is a fairly straightforward amendment. I urge colleagues to support it. At the appropriate time, I will ask for the yeas and nays.

I yield the floor.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. Madam President, I thank my colleague from South Dakota. I appreciate his cooperation in getting the amendment up and having a chance to debate it. It is my understanding, even though the debate may not last long on this, there will be a vote probably sometime around 2:15. That is the plan right now. So while we may not exhaust a lot of time when we come back at 2:15, I ask unanimous consent that there be 2 minutes equally divided between the Senator from South Dakota and myself for the benefit of our colleagues before a vote, to explain the amendment once again before we actually have a vote. I ask unanimous consent for that.

Madam President, I withhold that request.

Let me address the substance of the amendment. What all of us want, without exception, is to have this TARP money come back. This is taxpayer money that went out last fall to shore up the financial system, to make it possible for the financial system to get stabilized and provide resources to either purchase toxic assets or legacy assets, as well as to make capital investments in order to provide stability to institutions that were at risk of becoming completely insolvent or going out of business entirely. History will ultimately judge whether that decision was the right one or the wrong one. I happen to believe it was right. Most people concluded that it was, that had we not taken that step, as difficult as it was, with the warnings of the Federal Reserve Board and others that the financial system, in fact, globally, could melt down if we did not act quickly—it was awfully difficult in that environment to know exactly what was best. But given the time constraints and the importance of the issue, this body acted. I think we did so appropriately and properly.

The good news is that it is showing some glimmer of hope. I don't want to overstate the case, but there are some indications that this is beginning to work. Not that it will resolve itself overnight, but certainly it is beginning to show the possibility of getting credit once again moving.

The Senator from South Dakota offers an amendment that has a certain attractiveness, the idea that TARP money now coming back, as much as maybe $25 billion, maybe more—certainly, we hope a lot more ultimately will come back into the coffers of the Government—what do we do with that TARP money at this juncture? If we adopt the amendment of the Senator from South Dakota, it would take those resources off the table. We couldn't use them. What does that mean? It would mean that just at a time when the so-called stress tests are being conducted—and none of us knows and won't know until this Thursday how many of these 19 institutions will actually need additional capital. We hope none do, but I suspect some will. If that is the case, where does it come from?

I know this much about our colleagues: Whether you serve on one side or the other, none of us would rather go back and have to vote again on yet another tranche of TARP money. Wouldn't it be wiser, since the previously passed legislation allows for any money that comes back into the Government from these institutions repaying the TARP money, to recycle that money rather than coming back again and asking for additional money, which we may very well be asked to do very quickly?

My concern with the amendment is, just at the very hour that we may need some additional resources to either further capitalize or purchase toxic assets, in either case to allow our economic recovery to move forward, we would be removing those resources altogether, once again forcing this institution to allocate additional resources. The more prudent step to take would be to utilize these resources coming back at this critical moment in order to get this program working.

Why is that important? It isn't just about the financial institutions. In fact, if it were only about that, I suspect I know where 99 or 100 of us would be on that issue. The question isn't so much what happens to these major institutions in and of themselves; it is what happens to the people who depend upon them, those small businesses, midsize businesses that need credit lines in order to buy inventory, to pay employees. What happens to people who are seeking a mortgage, buying an automobile, dealing with student loans, dealing with credit card debt? All of these issues are affected by what happens in the financial system as a whole. These are not separate entities disconnected to the overall well-being of the economy. If you could divorce them from the well-being of the economy, most would say amen and do so. But to suggest so is to not understand how the financial system has to operate.

At the very moment that we as a nation need to keep this ball moving in a direction that allows for the financial system to shed the toxic, clogging assets that are freezing up the circulatory system financially, we would be stepping back and forcing an institution to vote for additional resources. My political barometer tells me there are not the votes. I think most of my colleagues know that. At this juncture, we need to see a lot more about how this program is working before this institution is likely to vote again for an additional allocation of taxpayer money for the program. It may come to a point where the President will ask us for that. But I don't think we want to jump to that option, particularly if we have resources coming off the TARP program that could be recycled for the next 11 months or so and that we can properly use at a moment that it is needed.

That is the reason I will ask my colleagues to respectfully reject this amendment. At this very hour, the last thing we need to be doing is deny the Treasury Department and others the resource capacity to respond to a situation.

It is in one sense, on one level, about the financial institutions. But in a far more profound and important way, it is about the people who depend upon these institutions for their economic livelihood, their economic well-being, their economic survival. That is not an exaggeration. Most businesses need credit in order to operate. If you strangle credit and it does not move, then the people whom we care most about—the small businesses on Main Street, that home purchaser, that other person out there struggling at this hour, when you are losing 20,000 jobs a day, 10,000 homes every day through foreclosure, not to mention retirement accounts and other problems—at the very hour that things seem to be just limping ever so slightly in the right direction, to deny these moneys to reinvest in the program and make it work and depend upon the outcome of a vote here to provide additional resources would be the wrong step in the wrong direction. The very people we want to see get back on their feet again would be the victims.

We have a tendency to focus on whether these institutions are deserving of help. My colleagues may be divided on that point. I don't think we are divided on whether we want to see the people who need the institutions get help. There, I think we all agree. So at the very hour we agree about helping them, we deny them the ability to get the help they need by depriving these resources to be reinvested in the acquisition of the very assets that are making it difficult for credit to move. That is the reason I am asking my colleagues to reject the amendment when the vote occurs at 2:15.

Again, we will know on Thursday how many of these lending institutions are so-called ''passing the stress test.'' My hope is that a majority of them are and that there would be very few, if any, that need more capital. I suspect there will be some that do. Which is the better choice at that moment—to take some of this TARP money that has come back and put that to use or take that off the table and have to come back up here and seek a majority vote or a 60-vote margin? What is the likelihood of that occurring? If it is not likely to occur and we stall out in this recovery, all of us would regret that.

So I appreciate very much the spirit with which Senator THUNE offers the amendment. We all agree we would like this money back. We would like it back with interest. We would like to strengthen our economy, restore that confidence and optimism that is critical for the success of the Nation. But we also recognize, as do most Americans, that we have a time to go before this is going to result in the recovery we would all like to see. This decision, at this juncture, could stall or set that effort back, not just days and weeks but months. None of us wants to be a party to that.

With those thoughts, at the appropriate time I will ask my colleagues to vote against the Thune amendment and move on to the remaining amendments which we hope we can clean up this afternoon and finish voting on this very important bill. This is a bill that is very important to our community bankers, to our folks out there trying to resolve how they can stay in their homes. It is very important to the Federal Deposit Insurance Corporation, the insurance fund, as well as to the national credit unions across the country. There are a lot of entities that do need this kind of help. It is a major step in getting our economy moving in the right direction. This amendment would set that effort back and jeopardize this legislation from being adopted quickly at a time when we need it. With respect to the author of the amendment, knowing his intentions and his motivations are certainly understandable, I think it is the wrong choice at this hour.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mrs. GILLIBRAND. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. DODD). Without objection, it is so ordered.

Mrs. GILLIBRAND. Mr. President, I commend the debate and the Presiding Officer's amendment and Senator KERRY for his amendment on addressing these issues of foreclosure. They are so significant in New York, and we need action from Congress and the leadership of President Obama on this issue.

This year, Congress and the administration have taken a number of actions to help our homeowners weather this housing crisis. We have worked to expand foreclosure counseling services, provide homeowners with incentives to write down their debts, and to give local governments and States the tools they need to tackle this housing crisis.

These efforts will help thousands of homeowners in my home State of New York avoid losing their home. Homeowners are also not the only folks affected by this housing crisis. Across the country, thousands of tenants who rent their homes have also been affected.

I remember talking to one friend up in Warren County, and he said to me: Can you please look out for the renters? We suffer in these times as well. And that is exactly right.

More than 30,000 renters across New York who are dutifully paying their rent on time every month may face eviction because they live in a building that is about to be foreclosed. It is estimated that as much as 50 percent of foreclosures have renters involved in those properties.

These tenants have almost no rights when a bank seizes their home. Families without the means to find temporary housing or to move into another unit can literally get kicked out on the street because the landlord has failed to meet his payments or his or her obligations.

For any family this is a horrible tragedy and something that is very difficult to manage. For a low-income family with limited resources and without another place to stay, it is catastrophic. Families without the means

to find a temporary housing arrangement or to move into another unit can be kicked onto the streets just because their landlord failed to pay on time.

This is wrong, and I am proud to partner with the Presiding Officer and Senator KERRY to pass new protections for those families. This amendment would allow any tenants in a foreclosed building the right to live out their lease, providing them with the same protections any other renter would have. For a family without a lease, the amendment would guarantee a minimum of 90 days' notice so that renters have the time and the resources to find a new home.

As the housing crisis becomes more and more widespread, we need to make sure we are not just helping homeowners stay in their homes but also helping the thousands of tenants who are hit just as hard or even worse as a result of this crisis.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. DODD. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mrs. GILLIBRAND). Without objection, it is so ordered.

Mr. DODD. Madam President, I ask unanimous consent that at 2:15 p.m. there be 2 minutes of debate equally divided between Senators THUNE and DODD or their designees; that upon the use or yielding back of time, the Senate proceed to a vote in relation to Thune amendment No. 1030 and that there be no amendments in order to the Thune amendment prior to the vote.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DODD. With that, Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. REID. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

RECESS

The PRESIDING OFFICER. Under the previous order, the Senate stands in recess until 2:15 p.m.

Thereupon, the Senate, at 12:30 p.m., recessed until 2:15 p.m., and reassembled when called to order by the Acting President pro tempore.

HELPING FAMILIES SAVE THEIR HOMES ACT OF 2009—Continued

AMENDMENT NO. 1030

The ACTING PRESIDENT pro tempore. Under the previous order, there is now 2 minutes of debate equally divided on amendment No. 1030 offered by the Senator from South Dakota, Mr. THUNE.

Who yields the time? The Senator from South Dakota.

Mr. THUNE. Mr. President, very briefly, to summarize, what my amendment does is reduce TARP authority by any amount of principal returned by a financial institution to the Treasury Department. This amendment, as I said before, is necessary because until the December 31, 2009, expiration date, and possibly longer if the Secretary is granted an extension without this legislation, Treasury can continue to use TARP funds, including those repaid, in any manner they see fit.

These are taxpayers' dollars. They should not become a discretionary slush fund. These are dollars that, when they are repaid to the Treasury by the financial institutions, ought to be used to reduce the amount of TARP funding authority that is available.

As of May 1, the new administration has accumulated $580 billion of new debt. That is about $5.5 billion new debt per day. I understand we should not be tying Treasury's hands when we are still in the midst of a financial crisis, but Congress has the responsibility to decide how the tax money is spent, not the administration. If more money is needed in the financial sector, then Treasury needs to present a plan to the Congress and let those of us elected by the taxpayers decide whether additional tax dollars should be placed at risk or spent.

That is what the amendment would do. I urge my colleagues to adopt it.

I ask for the yeas and nays.

The ACTING PRESIDENT pro tempore. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The ACTING PRESIDENT pro tempore. The Senator from Connecticut.

Mr. DODD. Mr. President, I want to take 1 minute. Let me say to my colleagues, all of us would like to see the TARP money come back and we recapture all of it. The danger in all this right now, with the stress test coming out on Thursday, is to be utilizing the TARP money rather than having to appropriate more money, it seems to me, to utilize TARP money to buy toxic assets and make the capital investments is what we want to do. The last thing we want to do is come back here and vote for additional money. Here is a moment when it is critically important that we take advantage of the resources to continue the program, so that we buy the assets, invest the capital necessary to get us out of this mess. At the very moment we want to be doing that, we will be back here voting. I do not need to tell my colleagues, if we need new TARP money, how difficult that would be. To avoid going down that road, utilizing the money that has come back from these interests that have gotten their money makes a lot more sense to me, I respectfully say to my friend from South Dakota.

This amendment could not come at a worse time. We are going to need the capital for institutions that need help. They need help. I am not interested in them. I am interested in their ability to provide credit to homeowners, small businesses, and student loans. The credit system is frozen. We need to unfreeze it. If you deny the ability to invest these TARP dollars into buying assets and providing capital, it seems to me you slow down or set back that process considerably.

For those reasons, I urge my colleagues to vote against the amendment. I thank my colleague for the intention behind it.

Have the yeas and nays been ordered?

The ACTING PRESIDENT pro tempore. The yeas and nays have been ordered.

The question is on agreeing to amendment No. 1030. The clerk will call the roll.

The legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from Montana (Mr. BAUCUS), the Senator from South Dakota (Mr. JOHNSON), the Senator from Massachusetts (Mr. KENNEDY) and the Senator from West Virginia (Mr. ROCKEFELLER) are necessarily absent.

The ACTING PRESIDENT pro tempore. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 47, nays 48, as follows:

[Rollcall Vote No. 179 Leg.]

YEAS—47

Alexander	Dorgan	McCain
Barrasso	Ensign	McConnell
Bennett	Enzi	Murkowski
Bond	Feingold	Nelson (NE)
Brownback	Feinstein	Pryor
Bunning	Graham	Risch
Burr	Grassley	Roberts
Cantwell	Gregg	Sessions
Chambliss	Hatch	Shelby
Coburn	Hutchison	Snowe
Cochran	Inhofe	Tester
Collins	Isakson	Thune
Corker	Johanns	Vitter
Cornyn	Kyl	Voinovich
Crapo	Lincoln	Wicker
DeMint	Martinez	

NAYS—48

Akaka	Hagan	Mikulski
Bayh	Harkin	Murray
Begich	Inouye	Nelson (FL)
Bennet	Kaufman	Reed
Bingaman	Kerry	Reid
Boxer	Klobuchar	Sanders
Brown	Kohl	Schumer
Burris	Landrieu	Shaheen
Byrd	Lautenberg	Specter
Cardin	Leahy	Stabenow
Carper	Levin	Udall (CO)
Casey	Lieberman	Udall (NM)
Conrad	Lugar	Warner
Dodd	McCaskill	Webb
Durbin	Menendez	Whitehouse
Gillibrand	Merkley	Wyden

NOT VOTING—4

Baucus	Kennedy
Johnson	Rockefeller

The amendment (No. 1030) was rejected.

Mr. DODD. I move to reconsider the vote and to lay that motion on the table.

The motion to lay on the table was agreed to.